

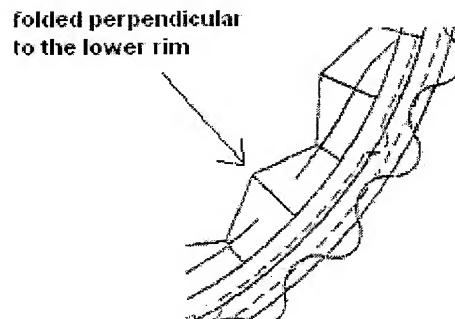
REMARKS/ARGUMENTS

This amendment is submitted in response to the Office Action dated November 1, 2007. Claims 1, 11, 21 and 23 have been amended. Claim 22 has been canceled. Claims 1-21 and 23 remain pending in this application. Reconsideration and allowance are respectfully requested in view of the remarks made below.

1. The Rejections under 35 U.S.C. § 112

Claims 1-23 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

In particular, the Office Action submits that the language “at least one pleat is folded perpendicular to the lower rim,” found in claims 1, 11 and 21-23, is not supported by the original disclosure. The Applicant respectfully disagrees and points to pages 5-7 of the Specification and Figures 4 and 5 which clearly show at least one pleat folded perpendicular to the lower rim. The figure below shows a pleat folded perpendicular to the lower rim.



The Applicant respectfully submits that the language indicated by the Office Action meets the requirements of 35 U.S.C. § 112, first paragraph, and that the rejection is improper. Removal of the rejection and notice to that effect is earnestly requested.

2. The Rejections under 35 U.S.C. § 102

Claims 1, 2, 3, 7-13 and 17-23 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2005/0000931 to Bosl et al. (hereinafter "Bosl").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP 2131.

Bosl discloses a closure cap 10 and has a tamper-indicating band 40 that has a plurality of circumferentially spaced retaining flaps 60 connected to its end that is remote from the skirt 35. See *Bosl*, paragraph [0031]. It is indicated that the flaps can be processed to introduce fold lines or pleats. See *Bosl*, paragraph [0031]. Bosl does not disclose having at least one outwardly and at least one inwardly pleated fold. Bosl only discloses pleated elements with two folds pleated in the same direction.

Independent claims 1, 11 and 23 have been amended to incorporate the limitations that previously existed in claim 22 and to require separate pleated retaining elements. Claim 21 has been amended to require having separate pleated retaining elements. Each of the independent claims now require a J-hook retention member that includes "a plurality of separate pleated retaining elements with a pleated shape on their inside and their outside" and "at least one of the pleated retaining elements has on its inside and on its outside at least one inwardly directed fold and at least one outwardly directed fold," or "at least one of the pleated retaining elements has on its inside and on its outside at least one inwardly directed fold, at least one outwardly directed fold and a trailing edge." As noted above, Bosl does not disclose having on its inside and outside at least one outwardly and at least one inwardly directed fold and instead discloses having two folds pleated in the same direction.

Therefore, each and every limitation of independent claims 1, 11, 21 and 23 is not met by Bosl and the rejection should be removed. Dependent claims 2, 3, 7-10, 12-13 and 17-20 are also in condition for allowance by virtue of their dependence upon allowable base claims.

Claims 1-11 and 18-23 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,109,464 to Takano (hereinafter "Takano").

Takano discloses a pilfer-proof plastic cap having a band member 2 connected to an annular wall 5. See *Takano*, col. 5, lines 27-29. The annular wall 5 has a number of stopper tabs 7, which consist of number of triangular surface walls. See *Takano*, col. 5, lines 41-45. The annular wall in Takano extends upwardly and radially inwardly with the stopper tabs formed in the annular wall. Takano does not disclose having separate retaining elements as is now required by the independent claims. It further does not appear that Takano discloses having on its inside and outside at least one outwardly and at least one inwardly directed fold as is now required by the independent claims.

Therefore, each and every limitation of independent claims 1, 11, 21 and 23 is not met by Takano and the rejection should be removed. Dependent claims 2-10, 18-20 are also in condition for allowance by virtue of their dependence upon allowable base claims.

Claims 1-3, 7-11 and 18-23 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,801,031 to Barriac (hereinafter "Barriac").

Barriac discloses a tamper indicating closure. See *Barriac*, the Abstract. Disclosed is a band 30 having a second portion 33 joined by a portion 34 to a first portion 31. See col. 3, lines 35-42. Barriac also discloses an annular bead 37. See *Barriac*, col. 7, lines 49-54. Barriac does not show separate pleated elements such as now required by independent claims 1, 11, 21 and 23. Furthermore, the elements disclosed by the document are not constructed and arranged to engage a container so as to resist rotation. The elements also do not have an edge in a rotational direction. Additionally, it does not appear that Barriac has on its inside and outside at least one outwardly and at least one inwardly directed fold as is required by the independent claims.

Therefore, each and every limitation of independent claims 1, 11, 21 and 23 is not met by Barriac and the rejection should be removed. Dependent claims 2, 3, 7-10, and 18-20 are also in condition for allowance by virtue of their dependence upon allowable base claims.

3. The Rejections under 35 U.S.C. §103(a)

Claims 12-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Takano in view of U.S. Patent No. 4,813,561 to Ochs (hereinafter "Ochs") or, alternatively, U.S. Patent No. 6,276,543 to German et al. (hereinafter "German").

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." See MPEP 2143.03.

As discussed in the previous response, Ochs concerns a closure with a disk shaped metal cover and a sealing portion at its outer edge. The closure comprises a tamper evident band, which is shown in FIGS. 3 and 4 of Ochs. The tamper evident band comprises a J-hook retention member, which is molded integrally with the skirt in a downward position and subsequently bent upwardly. The band is molded with spaced ratchets with one or more ratchet teeth to cooperate with spaced ratchets on the container. Ochs does not disclose having separate retaining elements. It further does not appear that Ochs discloses having on its inside and outside at least one outwardly and at least one inwardly directed fold.

Also discussed in previous responses, German discloses a composite closure with an insert cover disk. A tamper evident band is formed as a downward extension of the closure skirt. Along its lower edge the band has a band retainer that comprises a plurality of hinged angular spaced tabs or spring fingers, which can be inverted from a down position to an up "use" position. See *German*, FIG. 4 and 5A, Col. 6 lines 30+. Each finger presents one or more ratchets. The "fingers" disclosed in the reference are so stiff that if they were not separated by gaps they could not be inverted, which would not hold for pleated elements. German does not disclose having separate retaining elements. It further does not appear that German discloses having on its inside and outside at least one outwardly and at least one inwardly directed fold.

As discussed above in section 2, Takano does not disclose having separate retaining elements or having on its inside and outside at least one outwardly and at least one inwardly directed fold as is now required by the independent claims.

Therefore, each and every limitation of claim 11, from which claims 12-17 depend, is not met by any of Takano, German or Ochs, either separately or in combination. A *prima facie* case for obviousness has not been established. Claims 12-17 are in condition for allowance by virtue of their dependence upon claim 11.

Claims 12, 13 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Barriac in view of Ochs or German.

As noted above neither Ochs nor German disclose having separate retaining elements or having on its inside and outside at least one outwardly and at least one inwardly directed fold as is now required by the independent claims.

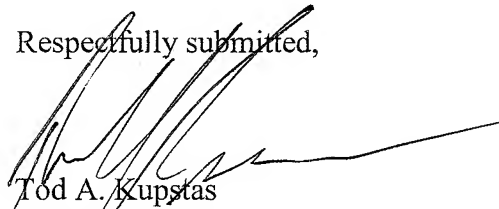
As discussed above in section 2, Barriac does not disclose having retaining elements or having on its inside and outside at least one outwardly and at least one inwardly directed fold as is now required by the independent claims.

Therefore, each and every limitation of claim 11, from which claims 12, 13 and 17 depend, is not met by any of Barriac, German or Ochs, either separately or in combination. A *prima facie* case for obviousness has not been established. Claims 12, 13 and 17 are in condition for allowance by virtue of their dependence upon claim 11.

4. Conclusion

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he or she is respectfully invited to telephone the undersigned at 215-599-0600. Contact with the undersigned via electronic mail at takupstas@patentwise.com is hereby authorized¹ per MPEP 502.03.

Respectfully submitted,



Todd A. Kupstas
Registration No. 54,917

Date: January 29, 2008

KNOBLE YOSHIDA & DUNLEAVY, LLC
Eight Penn Center- Suite 1350
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 599-0600 Main
(215) 599-0601 Fax
takupstas@patentwise.com

¹ Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.